

tration of this Plan are specifically excluded from the arbitration procedures outlined in Article G9 of the Agreement.

DENTAL EXPENSE PLAN

G12.09. The NYNEX Non-Management Dental Expense Plan as

ed from the grievance and arbitration procedures outlined in Articles G8 and G9 of this Agreement.

LONG TERM DISABILITY PLAN

G12.17 The NYNEX Long Term Disability Plan for Non-Salaried Employees is hereby incorporated by reference as part of this Agreement.

G12.18 All questions arising in connection with the NYNEX Long Term Disability Plan for Non-Salaried Employees are specifically excluded from the grievance and arbitration procedures outlined in Articles G8 and G9 of this Agreement.

SAVINGS AND SECURITY PLAN

G12.19 The NYNEX Corporation Savings and Security Plan (Non-Salaried Employees), as amended, is hereby incorporated by reference as part of this Agreement.

G12.20 All questions arising in connection with the NYNEX Corporation Savings and Security Plan (Non-Salaried Employees) other than the Company's determination of eligibility of employees to participate in the Plan are specifically excluded from the arbitration procedures outlined in Article G9 of the Agreement.

STOCK OPTION PLAN

G12.21 The NYNEX Stock Option Plan, as amended, is hereby incorporated by reference as part of the Agreement.

G12.22 All questions arising in connection with the NYNEX Stock Option Plan are specifically excluded from the grievance and arbitration procedures outlined in Articles G8 and G9 of the Agreement.

ELIGIBILITY

G12.23 All regular and temporary employees with at least six (6) months of Net Credited Service as computed under the NYNEX Pension Plan, as amended, shall be eligible for the benefits listed in paragraphs G12.01 through G12.14 of this Article. The benefits specified in paragraphs G12.15 through G12.22 shall be ap-

plicable only to regular employees with appropriate Net Credited Service as specified in the particular Plan involved. The benefits specified in paragraph G12.06, NYNEX Medical Expense Plan, and the NYNEX Alternate Choice Plan are available before six (6) months of Net Credited Service on a fully contributory basis, in accordance with the terms of the specific Plan.

ARTICLE G13

Monthly Pension Benefit

G13.01 Subject to the provisions of the NYNEX Pension Plan applicable to employees covered by this Agreement, together with all procedures authorized in connection therewith, an employee's basic monthly retirement benefit shall equal the dollar amount shown from the appropriate pension band for that employee in the following table, according to date of retirement, multiplied by such employee's years and months of service (prorated for any period of time during which the employee was employed on a part time basis).

fill vacancies under this Article shall be reimbursed for reasonable moving costs or elect to receive a relocation allowance if otherwise eligible under the applicable provisions of this Agreement. No other expense, travel time or expense allowance treatment will be provided.

G24.07 Employees who fill Job Bank vacancies in a lower pension band within the Company shall be treated as laid off employees for purposes of recall.

G24.08 No question arising in connection with determinations made by the Company under this Article, or any other questions arising under this Article shall be subject to arbitration.

ARTICLE G25

Technological Displacement

G25.01 If during the term of this Agreement, the Company notifies the Union in writing that technological change (defined as changes in equipment or methods of operation) has or will create a surplus in any job title in a work location which will necessitate reassignments of regular employees to different job titles involving a reduction in pay or to locations requiring a change in residence, or if a force surplus necessitating any of the above actions exists for reasons other than technological change and the Company deems it appropriate, any regular employee who is in the affected job titles and work locations may elect not to accept such reassignment and may instead elect to be separated from the payroll. Employees electing separation shall receive Income Protection payments as provided for in Article G23. Any such regular employee who refuses to accept a transfer to a job title having the same or greater rate of pay and which does not require a change in residence shall not receive Income Protection payments.

ARTICLE G26

Extended Medical Coverage

G26.01 Regular employees who are not eligible for a service pension and (i) whose employment is terminated as a result of layoff or application of the force adjustment procedures; or (ii) who elect to leave the service of the Company pursuant to

the provisions of the Income Protection Plan; or (iii) who elect, pursuant to the Technological Displacement provisions to leave the service of the Company in lieu of reassignment to a different job title involving a reduction in pay or to locations requiring a change in residence, shall continue to remain eligible for coverage for up to eighteen (18) months under the NYNEX Medical Expense Plan, the NYNEX Alternate Choice Plan, or their successor plans, as follows:

- (a) An employee whose net credited service is five (5) years or more will be eligible for coverage at Company expense for a period of six (6) months following the month in which employment is terminated. The employee may elect to continue such coverage for an additional twelve (12) months at the employee's expense by paying the monthly premium amount.
- (b) An employee whose net credited service is at least one (1) year but less than five (5) years will be eligible for coverage at Company expense for a period of three (3) months following the month in which employment is terminated. The employee may elect to continue such coverage for an additional fifteen (15) months at the employee's expense by paying the monthly premium amount.
- (c) An employee with less than one (1) year of net credited service who is eligible for coverage at the time of termination of employment may elect to continue such coverage at the employee's expense for a period of eighteen (18) months following the month in which employment is terminated by paying the monthly premium amount.

G26.02 The extended medical coverage shall be on the same basis and in the same amount to which the employee or the employee's dependent(s) was entitled immediately prior to the employee leaving the service of the Company. If during the period of any extended medical coverage, as set forth above, the medical expense coverage is changed for employees who remain on the payroll, the same changes will be applied to persons participating in this extended medical coverage program.

TAD

1991 MEMORANDUM OF UNDERSTANDING

EXHIBIT 1
APPENDIX B
ATTACHMENT 11

between

NEW YORK TELEPHONE COMPANY
EMPIRE CITY SUBWAY COMPANY (LIMITED)
NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY
TELESECTOR RESOURCES GROUP, INC.
NYNEX CORPORATION
NYNEX INFORMATION RESOURCES COMPANY
NYNEX MOBILE COMMUNICATIONS COMPANY

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
(AFL-CIO)

This Memorandum of Understanding is agreed by and between the undersigned representatives of the above-named NYNEX Companies (hereinafter the "Companies") and the above-named Unions (hereinafter the "Unions") with respect to 1991 Regional and Local Bargaining items, as follows:

(A) It is understood that the 1991 Regional Bargaining items which have been agreed to by the parties and are attached hereto will be effective September 1, 1991, unless a different effective date is specified herein, and will be incorporated, by reference or otherwise, into the Collective Bargaining Agreements between the Companies and the Unions.

(B) It is understood that items agreed to at 1991 Local Bargaining Tables will be effective on the dates specified by the parties and will be incorporated, by reference or otherwise, into the Collective Bargaining Agreements between the Companies and the Unions.

(C) Provisions of the 1989-1992 Collective Bargaining Agreements between the Companies and the Unions shall remain in effect through August 5, 1995, unless the parties expressly modify such provisions by this Memorandum of Understanding or by agreement at 1991 Local Bargaining Tables.

- Develop an atmosphere of trust and openness.
- Rid ourselves of arbitrary, confrontational, and authoritarian attitudes.
- Encourage creativity and participation.
- Encourage and provide opportunities for advancement.

Nothing herein shall be deemed to amend, modify or interpret any right or obligation of the parties under this Collective Bargaining Agreement. Any question arising under this Joint Commitment is specifically excluded from the grievance and arbitration procedure of the Collective Bargaining Agreement.

A three-person committee (the "Commitment Committee") consisting of one representative from the IBEW, one from CWA and the Chairman of the Regional Bargaining Committee from the Corporation, or their designees, shall be formed to determine the best means of informing all employees of these mutual objectives, principles and values and to foster development of them among the Company's employees and the Unions'

BENEFITS

The following Benefit Plans and Programs are continued in effect through August 5, 1995:

NYNEX Medical Expense Plan

NYNEX Non-Management Dental Expense Plan

NYNEX Alternate Choice Plan

NYNEX Non-Management Vision Care Plan

NYNEX VDT User Eyecare Program

NYNEX Non-Management Group Life Insurance Programs

NYNEX Dependent Group Life Insurance Program

NYNEX Corporation Savings and Security Plan
(Non-Salaried Employees)

NYNEX Long-Term Disability Plan for
Non-Salaried Employees

New York Telephone Anticipated Disability Program

New England Telephone Anticipated Disability Program

NYNEX Anticipated Disability Program

NYNEX Sickness and Accident Disability Benefit Plan

New York Telephone Sickness and Accident
Disability Plan

New England Telephone Sickness and Accident
Disability Plan

NYNEX Pension Plan

All benefits and benefit plans presently in effect shall continue through August 5, 1995 unless expressly changed by this Agreement or subsequent agreement of the parties.

HEALTH CLAIMS ADMINISTRATION COMMITTEE

Recognizing the need to improve the quality of the administration of health care claims, the NYNEX Corporation and the Unions agree to establish a joint Health Claims Administration Committee.

The Committee will consist of two representatives from the NYNEX Corporation and one representative designated by CWA and one representative from the IBEW. The Committee shall meet at times and places mutually agreeable to the parties but no less frequently than four times per year.

The purpose of the Committee will be to review the procedures for administration of health care claims payments (including the decisions of the Health Care Administrator), including medical, dental and vision claims, to develop and recommend cost-effective proposals for improving such claims procedures and to assure that employees are properly receiving their benefits under the Plan.

The purpose of this Committee is not to review all claims submitted; the Committee will, however, review specific problems and problem claims that are brought to its attention.

The Committee shall not have any authority to hear or decide claims under the terms of any of the NYNEX, New England or New York Telephone Company benefit plans.

NYNEX MEDICAL EXPENSE PLAN

Effective on the dates provided below, the NYNEX Medical Expense Plan (the "MEP") will be amended as follows:

1. RETIREEES

(a) The section of the MEP entitled "Retired Employee Contributions" shall be amended as follows:

Effective January 1, 1992, the MEP shall be amended for all Employees who retire on any date on or after January 1, 1992 (hereinafter "Covered Retirees"), to provide for an annual company contribution for coverage not to exceed the amounts below:

Category 1. Under Age 65

| | |
|-----------------|----------|
| Single Coverage | \$ 6,350 |
| Family Coverage | \$11,430 |

Category 2. Age 65 or Over

| | |
|-----------------|---------|
| Single Coverage | \$2,180 |
| Family Coverage | \$4,360 |

If the aggregate MEP costs for Covered Retirees
in either Category 1 or 2 above exceeds the aggregate

In each subsequent year, a new projected cost will be computed by the actuaries on the same basis as above and compared with the above Company contribution limits to determine the amount of any required premium for each such subsequent year.

Beginning in 1997, and in each successive year, actual and projected costs for all retired employees in the preceding year will be compared. If actual costs for all retired employees (including those who retired prior to January 1, 1992) in Category 1 or Category 2 were lower than projected costs, the difference per retired employee will be used to reduce future premiums for Covered Retirees in that category. If actual costs were higher than projected costs, the difference per retired employee will be used to increase future premiums for Covered Retirees in that category.

Notwithstanding the above, Covered Retirees will continue to be subject to any other premiums under the terms of the Plan.

(b) The parties agree that those bargaining unit employees who retire between January 1, 1992 and August 5, 1995 shall be treated in the same manner with respect to Post Retirement Medical benefits as those employees who retire after August 6, 1995.

TAB

ISSUE NO. 2: How should price cap LECs reflect amounts from prior year sharing or low-end adjustments in computing their rates of return for the current year's sharing and low-end adjustments to price cap indices?

ANSWER: As the Commission noted in the Designation Order, the NTCs normalized their 1992 interstate rate of return for purposes of calculating their 1993 sharing obligation by removing the 1992 revenues associated with the lower formula adjustment ("LFA") for 1991 underearnings.¹ The NTCs demonstrated in the Description and Justification (D&J) to their 1993 Annual Access Tariff filing and in their subsequent Reply

of both rate increases and rate reductions under price caps to share or increase earnings from earlier years.⁴

In the NTCs' view, the NPRM simply clarifies a requirement that is implicit in the Commission's Price Cap rules. In the following sections, the NTCs will demonstrate that normalization is required by the Commission's rules and that it is essential for a reasonable calculation of exogenous cost changes in the annual tariff filings.

1. The Price Cap System Would Be Legally Invalid If The Commission Did Not Require The LECs To Normalize Their Rates of Return In Computing Sharing Obligations and Lower Formula Adjustments.

If the Commission did not interpret its Price Cap rules to require the LECs to normalize their rates of return through "add-back" of sharing and LFA amounts, the Price Cap system would be legally invalid. This would occur because normalization is the only way that the Commission can enforce the upper and lower earnings limitations that are critical components of its Price Cap system.

The Price Cap sharing and LFA mechanisms replaced the rate of return enforcement rules that the court invalidated in AT&T v. FCC.⁵ In that case, the court found that the automatic refund rules in 47 C.F.R. Section 65.700 et seq were inconsistent with the rate of return prescription that the rules

⁴ Cf. Rate of Return Sharing and Lower Formula Adjustment, CC Docket No. 93-179, Notice of Proposed Rulemaking, FCC 93-325, released July 6, 1993.

⁵ American Tel. & Tel. Co. v. FCC, 836 F.2d 1386 (D.C. Cir. 1988).

were intended to enforce.⁶ The automatic refund rule required the LECs to make refunds for years in which their earnings exceeded the prescribed rate of return, plus a buffer, while it provided no mechanism for the LECs to recoup shortfalls for years in which their earnings were below the prescribed rate of return. The court found that this produced a "systematic bias" that would depress carrier earnings below the prescribed rate of return over the long run. Since the Commission had stated that the prescribed rate of return was the minimum return necessary for a carrier to stay in business, the court invalidated the automatic refund rule because it was inconsistent with the Commission's own understanding of its rate of return prescription.⁷

The Commission dealt with these issues in the LEC Price Cap Order by establishing a "backstop" mechanism to protect against excessively high or low earnings. While it prescribed a rate of return of 11.25 percent for rate setting purposes, it decided that carriers could retain 100 percent of earnings up to 12.25 percent as an incentive to become more efficient.⁸ To provide a balance of risk and reward, the

⁶ Id. at 1390-91.

⁷ Accord, Ohio Bell Tel. Co. v. FCC, 949 F.2d 864 (6th Cir. 1991).

⁸ LEC Price Cap Order at para. 123. The sharing mechanism also requires a LEC to share 50 percent of earnings between 12.25, percent up to a maximum of 16.25 percent, at which point the LEC would share 100 percent of earnings. This would prevent the carriers from earning more than 14.25 percent after making sharing adjustments. Id. at paras. 124-125.

Commission adopted the LFA mechanism, which allows the LECs to increase their price cap indexes to the extent that their earnings in any given year are below 10.25 percent. Although this is 1 percentage point below the prescribed rate of return, the Commission found that it would not be confiscatory, because it would still allow most companies to continue to attract capital and to maintain service.⁹ The Commission found that "a LEC with earnings below 10.25 percent is likely to be unable to raise the capital necessary to provide new services that its customers expect. It may even find it difficult to maintain existing levels of service."¹⁰ Therefore, the Commission adopted the LFA mechanism to ensure that the LECs could earn the minimum necessary return. If the Commission applied the LFA in a way that would tend to drive earnings below the LFA level, the Commission would contradict its own rate of return findings in the same way that it did in AT&T v. FCC.

A failure to require normalization of rate of return in computing sharing or LFA amounts would do exactly that. This is illustrated in Attachment A, which shows the effect of using actual rates of return to compute sharing obligations and LFA amounts for LECs whose earnings are above or below the earnings limitations. In order to isolate the effect of normalization, the examples assume that a carrier's earnings remain at the same level each year absent sharing or LFA. A LEC earning 8 percent in the base year would be

⁹ Id. at para. 165.

¹⁰ Id. at para. 148.

entitled to an LFA in the second year equal to the difference between its rate of return in the base year and the lower adjustment mark (10.25 percent). All other things being equal, the LEC would earn 10.25 percent in the second year, including LFA revenues. Since the LEC must reverse the LFA in the third year, its earnings would revert to 8.0 percent if it used its actual rate of return for year 2 (10.25 percent) to determine its eligibility for an LFA in year 3. This would trigger another LFA in the fourth year. As illustrated in the further examples and the graph in Attachment A, this would create the "see-saw" pattern of earnings that the Commission described in the NPRM. Thus, if the Commission did not allow an underearning LEC to normalize its earnings by removing the effect of an LFA, it would tend to drive the LEC's earnings below the level that the Commission has defined as confiscatory.

Attachment A also illustrates how a failure to normalize rates of return would undermine the Price Cap earnings limitations on the high end as well. A LEC earning at 17 percent in the first year would refund 100 percent of its earnings above 16.25 percent and 50 percent of its earnings between 12.25 percent and 16.25 percent, reducing its effective rate of return to 14.25 percent in the second year, all other things being equal. However, if the LEC used its actual rate

percent. Thus, the "see-saw" effect would produce average earnings over the effective upper limit of 14.25 percent. In addition, this see-saw effect would prevent the LEC from sharing the correct amount even if its earnings were not above the cap.

The charts in Attachment A also demonstrate that LECs will achieve the earnings levels intended by the Price Cap Rules if they normalize their rates of return. Normalization allows a LEC earning 8.0 percent to incorporate an LFA in each

report earned revenues rather than unadjusted "booked" revenues so that revenues would relate to the appropriate period and so that they would be consistent with how expenses and other items are reported on Form 492.¹² When a LEC collects revenues for services that it has provided in a prior period, (so-called "backbilling") it does not report the revenues for the period in which they are received, because the revenues were "earned" in the period during which the services were provided. Therefore, the LEC deducts those revenues from its booked revenues during the reporting period. Similarly, when a LEC gives a customer a credit or refund for overbillings in past periods, it normalizes its revenues in the reporting period by adding back the amount of the overbilling credit.

These principles are directly applicable to LFA and sharing amounts. An LFA is like backbilling, because the LEC receives the LFA revenues in the reporting period to compensate it for underearnings in the prior period. Thus, the LFA is "earned" in the past period, and it must be removed from revenues in the reporting period to reflect revenues earned during the reporting period. Sharing is like a credit or refund, because it is a reduction in revenues to return to ratepayers a portion of revenues that were overearned in the prior period. Those sharing revenues must be added back to the revenues in the reporting period to reflect revenues that would

¹² See Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to Establish Reporting Requirements, Report and Order, 1 FCC Rcd 952, 957 (1986).

have been received in the reporting period absent the exogenous adjustment for sharing.

The NTCs' 1992 LFA represented the revenues necessary to increase their 1991 earnings to the lower formula mark. Therefore, to determine the revenues earned during the 1992 reporting period, the NTCs had to normalize their revenues to exclude the effect of the lower formula adjustment for 1991 earnings that was included in the 1992 rates. For the 1993 reporting period, the NTCs intend to "add-back" the revenue reduction that they included in their 1993/94 rates to reflect sharing for overearnings in 1992. This normalization of 1993 earnings will set the appropriate standard for determining whether a LFA or a sharing obligation should be included in the 1994 annual access tariff filing.

3. The Pending Rulemaking Simply Clarifies The Fact That The Commission's Rules Already Require Normalization Of Rates Of Return.

The Commission's decision to clarify the normalization requirement in the NPRM does not imply that normalization is not required by the current rules. While some parts of the Commission's Price Cap rules are very explicit, such as where they provide formulas for computing changes to price cap indexes, other parts are descriptive in nature. The latter type of rule places the burden on the LEC to show that its tariffs are consistent with the words and intent of the rule. This is the case with respect to the rules governing most exogenous adjustments, including sharing and LFAs. For example, the rule requiring exogenous treatment of changes in

the Separations Manual do not provide any instructions as to how to calculate the effect of separations changes.¹³

Section 61.49(a) requires the LEC to submit sufficient data to support its tariff filing. Therefore, in calculating an exogenous cost adjustment for separations changes, the LEC must show that its methodology is consistent with the Commission's accounting and cost allocation rules and it must provide sources for its data. Similarly, the rules require the LECs to make exogenous adjustments "as may be necessary to reduce PCIs to give full effect to any sharing of base period earnings" required by the Commission's rules, and they permit "retargeting the PCI to the level specified by the Commission for carriers whose base year earnings are below the level of the lower adjustment mark."¹⁴ These general descriptions place the burden on the LEC to show that its method of calculating exogenous adjustments for sharing and LFAs is

¹³ See 47 C.F.R. Section 61.45(d)(1)(iii).

¹⁴ See 47 C.F.R. Sections 61.45(d)(1)(vii), 61.45(d)(2). There is some uncertainty concerning the exact wording of Section 61.45(d)(2). As adopted in the LEC Price Cap Order, this section required the LECs to make exogenous adjustments for sharing as "required by the sharing mechanism set forth in the Commission's Second Report and Order in Common Carrier Docket No. 87-313, FCC 90-314, adopted September 19, 1990" (i.e., the LEC Price Cap Order). See Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990), Appendix B, p. 6. We are aware of no subsequent amendments to this section. However, the bound version of the CFR omits the reference to the LEC Price Cap Order and requires that sharing comply with the sharing mechanism "set forth in 47 CFR parts 61, 65 and 69." Since none of those parts provides a description of the sharing mechanism, the LEC must in any event refer to the LEC Price Cap Order to develop a reasonable method of calculating its sharing obligation.

consistent with the Bridge-Can rules and with the intent of the